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10/035,455	11/01/2001	Gregory R. Shaw	12648US02	4484

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EXAMINER	
TRAN, CON P	

ART UNIT	PAPER NUMBER
2614	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/035,455	SHAW ET AL.	
	Examiner	Art Unit	
	CON P. TRAN	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 January 2009*.

2a)☒ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11,13-19 and 21-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11,13-19 and 21-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. **Claims 1-11, 13-19, and 21-24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Marash U.S. Patent 6,198,693 in view of Dolphin U.S. Patent 5,601,091.

Regarding **claim 1**, Marash teaches a method of artifact rejection (see Fig. 6A, and respective portions of the specification, col. 9, lines 16-32) comprising:

(a) receiving a signal (at block 61);

(b) picking noise component and a signal component (select minimum signal power as noise power);

(c) calculating a noise power from the noise component (block 61);

(d) based on the calculated noise power, storing the noise component in one of a plurality of noise buffers (selection schemes may be stored in computer

memory, col. 6, lines 60-62) and the signal component in a corresponding one of a plurality of signal buffers (such as in 2 seconds);

(e) repeating steps (a) through (d) (i.e., over a predetermined interval such as in 2 seconds);

(f) selecting noise buffer (i.e., block) having a lowest noise power (block 62);

(g) calculating a signal power from signal buffers corresponding to the selected combination of noise buffers (i.e., over a predetermined interval such as in 2 seconds); and

(h) calculating a signal to noise ratio from the signal power and the lowest noise power (block 63, Fig. 6A, col. 9, lines 16-32).

Marash does not explicitly disclose splitting the signal into a noise component and a signal component in order to pick the noise power; a combination of the plurality of buffers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, those of ordinary skill in the art when facing a design need of determining noise power would have recognized and would have split the signal, and a combination of the plurality of buffers taught by Marash into noise component and signal component as claimed for purpose of being computationally efficient, as suggested by Marash in column 3, lines 38-39. For further clarification, it would have

been obvious to try since there are a number of identified, predictable solutions (e.g., other convenience ways, see col. 9, lines 23-24) to the recognized need.

However, Marash does not explicitly discloses transmitting stimulus and receiving response to the stimulus.

Dolphin discloses audiometric screening apparatuses (col. 2, lines 11-14, Fig. 2) that discloses transmitting stimulus and receiving response to the stimulus (see Fig. 2, col. 3, lines 21-34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the audiometric screening apparatuses taught by Dolphin with the method of artifact rejection of Marash such that transmitting stimulus and receiving response to the stimulus as claimed for purpose of providing rapid, low-cost, comprehensive, non-invasive screening of a subject's hearing. as suggested by Dolphin in column 2, lines 11-14.

Regarding **claim 2,** Marash in view of Dolphin further teaches the method of claim 1. Marash further teaches further comprising counting the number of noise and signal components stored in each of the plurality of noise buffers and signal buffers, respectively (selection schemes may be stored in computer memory, col. 6, lines 60-62).

Regarding **claim 3**, Marash in view of Dolphin further teaches the method of claim 1. Marash further teaches further comprising calculating a signal to noise ratio

from the calculated signal and the lowest noise power (col.11, lines 63-67; col. 12, lines 18-22); and comparing the calculated signal to noise ratio to a predetermined value (block 64, Fig. 6A).

Regarding **claim 4,** Marash in view of Dolphin further teaches the method of claim 3. Marash further teaches further comprising performing a function (e.g., validate) if the calculated signal to noise ratio is greater than the predetermined value (block 64, Fig. 6A).

Regarding **claim 5,** Marash in view of Dolphin further teaches the method of claim 3. Marash further teaches further comprising performing a function (e.g., invalidate) if the calculated signal to noise ratio is greater than the predetermined value (block 64, Fig. 6A).

Regarding **claim 6,** Marash in view of Dolphin further teaches the method of claim 1. Marash further teaches wherein each stimulus comprises a plurality of points (sampling points col. 7, lines 18-22).

Regarding **claim 7,** Marash in view of Dolphin teaches the method 6. Marash further teaches using Fast Fourier Transform (FFT, col. 10, lines 52-62) unit.

However, Marash does not explicitly disclose wherein each stimulus comprises 1024 points.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, those of ordinary skill in the art when facing a design need of performing Fast Fourier Transform would have recognized, and would have calculated wherein each stimulus comprises 1024 points as claimed for purpose of being computationally efficient, as suggested by Marash in column 3, lines 38-39.

Regarding **claim 8,** Marash in view of Dolphin teaches the method 1. Marash further teaches calculating over a predetermined interval such as in 2 seconds (col. 9, lines 27-29) and selection schemes may be stored in computer memory (col. 6, lines 60-62).

However, Marash in view of Dolphin does not explicitly disclose wherein each of the plurality of noise and signal buffers comprises eight buffers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, those of ordinary skill in the art when facing a design need of storage the values of noise power and signal power would have recognized and would have selected wherein each of the plurality of noise and signal buffers respectively comprise eight buffer as claimed for purpose of being computationally efficient, as suggested by Marash in column 3, lines 38-39.

For further clarification, it would have been obvious to try since there are a number of identified, predictable solutions (i.e., other convenience ways, see col. 9, lines 23-24) to the recognized need.

Regarding **claim 9,** Marash in view of Dolphin teaches the method of claim 1. Marash further teaches wherein the method is employed in one of a DPOAE test, a TEOAE test, a BAER test, an ultrasound operation, an MRI operation, a RADAR operation, a GPS operation, an EEG operation, an EKG operation, or a communications operation (video conference, col. 1, lines 13- 19).

Regarding **claim 10,** Marash in view of Dolphin teaches the method of claim 1. Marash further teaches wherein splitting the signal into a noise component and a signal component comprises taking the discrete Fourier transform of the response (Fast Fourier Transform FFT, col. 10, lines 52- 62); stimulus (see Dolphin Fig. 2, col. 3, lines 21-34).

Regarding **claim 11,** Marash in view of Dolphin teaches the method 1. Marash further teaches calculating Fast Fourier Transform FFT, a set of frequency bins for storing the frequency representation values divided into a set of frequency bands (col. 10, lines 52- 62). However, Marash in view of Dolphin does not explicitly disclose wherein seven different frequencies are employed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, those of ordinary skill in the art when facing a design need of calculating the frequency representation values would have recognized and would have selected wherein seven different frequencies are employed as claimed for purpose of being computationally efficient, as suggested by Marash in column 3, lines 38-39.

For further clarification, it would have been obvious to try since there are a number of identified, predictable solutions (set of frequency bands; col. 10, lines 52-62) to the recognized need.

Regarding **claim 13**, Marash in view of Dolphin further teaches the method of claim 1. Marash further teaches further comprising, discarding the signal if the noise power of the noise component does not fit within an acceptable range of any of the plurality of noise buffers (block 64, Fig. 6A; see Abstract).

Regarding **claim 14,** this claim has similar limitations as Claim 1. Therefore it is interpreted and rejected under Marash in view of Dolphin for the reasons set forth in the rejection of Claim 1.

Regarding **claims 15-19,** these claims has similar limitations as Claims 2, 3, 4, 5, 2, and 13, respectively. Therefore they are interpreted and rejected under

Marash in view of Dolphin for the reasons set forth in the rejection of Claims 2, 3, 4, 5, 2, and 13.

Regarding **claims 21-24,** these claims has similar limitations as Claims 1, 13. Therefore they are interpreted and rejected under Marash in view of Dolphin for the reasons set forth in the rejection of Claims 1 and 13.

Response to Arguments

3. Applicants' arguments filed on January 02, 2009 have been fully considered but they are not persuasive.

Regarding Applicants' argument that Marash "Teaching a different way to calculate signal-to-noise ratio, a way that would not be useful in the claimed methods of artifact rejection, would indeed **lead away** from the claimed invention. Marash therefore teaches away from the claimed methods", examiner respectfully disagrees. As presented in the Final Office Action, since there is no specific recitation in Marash that say that can not combine. In addition, Marash teaches a way of calculating signal-to-noise ratio is not "teaches away".

Regarding Applicants' argument that "Finally, artifact rejection is a broad field that does not have a finite number of identified, predictable potential solutions. Thus, the

Office Action is devoid of the required "finding that there had been a finite number of identified, predictable potential solutions to the recognized need or problem.", examiner respectfully disagrees since the finite number of identified, predictable solutions are "splitting the noise component and signal component" or "not splitting the noise component and signal component" to the recognized need; and there is a reasonable expectation of success of splitting the noise component and signal component.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CON P. TRAN whose telephone number is (571)272-7532. The examiner can normally be reached on M - F (08:30 AM - 05:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor VIVIAN C. CHIN can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/CPT/
March 19, 2009

/Vivian Chin/

Supervisory Patent Examiner, Art Unit 2614